BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the matter of	)	
	)	
1998 Biennial Regulatory Review -- Testing New Technology	)	CC Docket No. 98-94
	)	
	)	

COMMENTS OF GTE

GTE Service Corporation and its affiliated domestic telephone operating companies (collectively "GTE")[1] respectfully submit their comments on the Notice of Inquiry in the above-captioned proceeding.[2] In the NOI, the Commission seeks comment on how it can ensure that regulation does not discourage applicants from conducting experiments involving new technology and new applications of existing technology.

I. INTRODUCTION.

GTE supports the Commission's endeavor to remove the hindrance of regulation that discourages carriers from conducting experiments involving new technologies and new applications of existing technologies. But GTE recognizes that while the instant

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1 GTE's domestic telephone operating companies are: GTE Alaska Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., and Contel of the South, Inc.

2 1998 Biennial Regulatory Review – Testing New Technology, *Notice of Inquiry*, CC Docket No. 98-94, FCC 98-118 (released June 11, 1998) (hereinafter "*NOI*").

proceeding presents substantial promise, it also presents substantial risk. Specifically, on the one hand, this proceeding can and should be utilized to unshackle carriers to enable them to test new technologies and applications. Unfortunately, however, not all of the industry views the emergence of competition favorably, and a number of players continue to attempt to persuade the Commission to use its regulatory authority to favor some competitors or technologies over others -- rather than exhibiting a bias in favor of competition itself. Thus, on the other hand, this proceeding exhibits the very real potential to devolve into an effort to micromanage the very carriers that are willing to undertake the risks of experiments.

In his separate statement, Commissioner Furchtgott-Roth describes the instant proceeding as "in the deregulatory spirit of Section 11 of the Communications Act." GTE wholly agrees that if, in fact, this proceeding results in a real and meaningful reduction in regulation, congressional intent will be fulfilled. However, if this proceeding is simply window dressing for further micromanagement, then the Commission will have lost a historic opportunity to encourage new technologies and applications, quite to the contrary of congressional intent.

With all candor, the Commission's track record with respect to carrier trials is less than glowing. In its current consideration, GTE believes that both the Commission and the industry can learn from the mistakes of the former video dialtone (VDT) regime – a regulatory construct which initially held such promise but that was ultimately crushed under the gauntlet of regulation. As history sadly teaches, VDT was derailed by regulatory micromanagement to such an extent that Congress was left with little choice but to disband the entire effort, replacing it with a different construct. Thus, while the

Commission began the VDT saga with the best of intentions – as it does the instant proceeding -- it allowed itself to slip into the type of historic micromanagement of carriers that ultimately made VDT unviable. The lesson, therefore, is that the challenge of this proceeding will be for the Commission to truly provide regulatory relief in order to incent carrier experimentation and to reject the siren's call of micromanagment.

II. A TWO-TRACK APPROACH TO CARRIER EXPERIMENTATION SHOULD BE ADOPTED.

Preliminarily, Congress granted the Commission substantial authority to utilize its *de*regulatory powers to encourage, amongst other things, carrier experimentation with new technologies and applications. As the NOI properly recognizes,[3] the deregulatory spirit of the 1996 Act is embodied (in part) in Sections 10, 11 and 706.[4] Thus, the Commission can and should use this occasion to exercise its authority to incent carrier experiemention.

The NOI initially asks whether the Commission should define a class of experiments that would qualify for forbearance treatment or encourage carriers to file forbearance applications regarding technology testing. GTE questions whether it is possible to define a class of experiments that would qualify for forbearance treatment without unintentionally limiting future experiments to that very same class description. Simply stated, technology is dynamic and does not lend itself to prediction. Any effort to define a class of experiments based on today's technology will soon be outdated and, if

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3 ¶¶ 2-3.

4 The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (February 8, 1996), *codified at* 47 U.S.C. § 151 *et seq.* (the "1996 Act"). 47 U.S.C. §§ 160, 161 and 1996 Act § 706. All reference to the "Act" are to the Communications Act of 1934, as amended by the 1996 Act.

adopted, will force future technology into categories and class descriptions solely for regulatory purposes.

Recognizing the dynamics of technology, GTE recommends that the Commission design a process whereby a potential experimenter can determine the degree of regulatory burden it will face based on the specifics of the experiment. The heart of the matter is to reduce regulatory uncertainty to the experimenter. All experiments involve risk. The Commission's role is to reduce the risk that a potentially beneficial experiment will never make it to testing because the cost, delay and uncertainty of the regulatory process exceed either the resources or the resolve of the applicant. GTE therefore proposes that the Commission establish a two-track approach to carrier experimentation:

Track 1: Where the proposed technology trial does not interfere with another carrier's current provision of service and the applicant is under price cap regulation, the applying carrier should notify the Commission of the experiment with sufficient specificity to allow the appropriate bureau to determine that this is the case, and, unless an contrary order is released within ten days, the carrier may proceed with the test.[5]

Track 2: Where the proposed technology test will affect another carrier's current provision of service (and such carrier or carriers do not otherwise consent[6]), the applicant is under rate-of-return regulation or the experiment raises specific safety

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5 This ten-day window is proposed as similar to the approval/disapproval process required for open video systems (OVS). *See* 47 U.S.C. § 573.

6 For example, the affected carrier or carriers may be jointly part of the test with the applying carrier, and therefore as interested in proceeding without regulatory hindrance as the applying carrier.

concerns,[7] an abbreviated notice and comment cycle should be established whereby challenges to the test (if any) are due within fifteen days of the application, the applying carrier's reply is due ten days later, and, unless an contrary order is released within fifteen days, the carrier may proceed with the test.

Track 1 is particularly necessary to incent carrier experimentation. Specifically, if the technology or application test does not restrict another carrier's current provision of service, it should be on a fast track for approval. In a competitive environment, no reasonable carrier will risk customer goodwill by conducting an experiment that injures or upsets the very group the company intends to serve. Especially in our ever-increasing competitive environment, any carrier that angers its customers will soon learn that customers have choices and will not be shy in exercising their choices. Thus, the market provides the Commission with the necessary assurances that such Track 1 testing cannot be misused by carriers. In addition, since price caps removes any incentive for Track 1 companies to subsidize the experiment at the expense of ratepayers, there is little need for prolonged and detailed Commission examination.

Similarly, in the case of Track 2 where technology or application tests do affect another carrier's current provision of service, the Commission should only require an expedited notice and comment proceeding. In the unlikely event that a Track 2 experiment has unintended effects on another carrier which are not addressed in the

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[7] For example, certain test involving radio spectrum may raise special concerns that require specific restrictions to ensure that harmful interference will not result from the tests.

notice-and-comment cycle, the Commission's recently expedited compliant process[8] provides an efficient vehicle for redress. In any case, the Commission need only provide a means of resolving actual problems that arise, rather than engaging in predictive behavior that attempts to assess every possible problem prior to it occurring.

GTE believes that this two-tracks process sends the right signals to carriers to incent them to undertake the risks of technological and application experimentation. If the Commission adopts this process, potential experimenters will know from the outset precisely what will be entailed in obtaining regulatory consent for the test. By substantially removing regulatory uncertainty from the heart of the process, carriers will face fewer costs and have a greater incentive to risk the investments necessary to test new technologies.

GTE agrees that the Commission is correct when it states: "We believe that a regulatory climate that encourages such testing predictably will make the initial investment into research more attractive."[9] The current process fails in this respect. Not only does it fail to offer a level of regulatory certainty; many times it leads the applying carrier into a regulatory morass that could hardly have been imaged at the time of the application. GTE's two-track approach resolves this failure by providing the regulatory certainty for applying carriers which the Commission seeks to establish. It therefore incents carriers to exercise their entrepreneurial spirit to the ultimate benefit of consumers.

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8 *See* Implementation of the Telecommunications Act of 1996: Amendment of Rules Governing Procedures to Be Followed When Formal Complaints are Filed Against Common Carriers, CC Docket No. 96-238, *Report and Order*, 12 FCC Rcd. 22497 (released November 25, 1997).

9 NOI at ¶ 9.(emphasis added).

III. CONCLUSION.

The Commission is obligated to use the tools that Congress provided to expand the competitive, deregulatory telecommunications marketplace. The instant proceeding offers a historic opportunity for the Commission to make meaningful changes in the level of regulation carriers face when attempting to test new technology and new applications of existing technology. GTE urges the Commission to establish a predictable process whereby approval for experiments is swiftly granted. GTE's two-track approach provides the appropriate vehicle for the Commission to fulfill its responsibility to incent carrier experimentation.

Dated: July 21, 1998

Respectfully submitted,

GTE Service Corporation and its affiliated domestic telephone operating companies

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